

SSB 6508 - S AMD 127

By Senator Gordon

ADOPTED 2/13/2010

1 Strike everything after the enacting clause and insert the
2 following:

3
4
5 "Sec. 1. RCW 4.20.020 and 2007 c 156 s 29 are each amended to
6 read as follows:

7
8 (1) Every (~~such~~) action under RCW 4.20.010 shall be for the
9 benefit of the (~~wife, husband~~) spouse, state registered domestic
10 partner, (~~child~~) or children, including stepchildren, of the person
11 whose death shall have been so caused. If there (~~be~~) is no (~~wife,~~
12 ~~husband~~) spouse, state registered domestic partner, or (~~such~~) child
13 (~~or children, such~~), the action may be maintained for the benefit
14 of:

15 (a) The parents(~~, sisters, or brothers, who may be dependent upon~~
16 ~~the deceased person for support, and who are resident within the~~
17 ~~United States at the time of his death~~) of a deceased adult child if
18 the parents are financially dependent upon the adult child for support
19 or if the parents have had significant involvement in the adult
20 child's life; or

21 (b) Sisters or brothers who are financially dependent upon the
22 deceased person for support if there is no spouse, state registered
23 domestic partner, child, or parent.

24 In every such action the jury may (~~give such~~) award economic and
25 noneconomic damages as(~~τ~~) under all circumstances of the case(~~τ~~)
26 may to them seem just.

27

1 (2) For the purposes of this section:

2 (a) "Financially dependent for support" means substantial
3 dependence based on the receipt of services that have an economic or
4 monetary value, or substantial dependence based on actual monetary
5 payments or contributions; and

6 (b) "Significant involvement" means demonstrated support of an
7 emotional, psychological, or financial nature within the relationship,
8 at or reasonably near the time of death, or at or reasonably near the
9 time of the incident causing death.

10

11 **Sec. 2.** RCW 4.20.046 and 2008 c 6 s 409 are each amended to read
12 as follows:

13 (1) All causes of action by a person or persons against another
14 person or persons shall survive to the personal representatives of the
15 former and against the personal representatives of the latter, whether
16 such actions arise on contract or otherwise, and whether or not such
17 actions would have survived at the common law or prior to the date of
18 enactment of this section(~~(: PROVIDED, HOWEVER, That)~~).

19 (2) In addition to recovering economic losses, the personal
20 representative (~~(shall only be)~~) is entitled to recover on behalf of
21 those beneficiaries identified under RCW 4.20.020 any noneconomic
22 damages for pain and suffering, anxiety, emotional distress, or
23 humiliation personal to and suffered by ((a)) the deceased ((~~on behalf~~
24 of those beneficiaries enumerated in RCW 4.20.020, and)) in such
25 amounts as determined by a jury to be just under all the circumstances
26 of the case. Damages under this section are recoverable regardless of
27 whether or not the death was occasioned by the injury that is the
28 basis for the action.

29 (3) The liability of property of spouses or domestic partners held
30 by them as community property and subject to execution in satisfaction
31 of a claim enforceable against such property so held shall not be
32 affected by the death of either or both spouses or either or both
33 domestic partners; and a cause of action shall remain an asset as
34 though both claiming spouses or both claiming domestic partners

1 continued to live despite the death of either or both claiming spouses
2 or both claiming domestic partners.

3 ~~((2))~~ (4) Where death or an injury to person or property,
4 resulting from a wrongful act, neglect or default, occurs
5 simultaneously with or after the death of a person who would have been
6 liable therefor if his or her death had not occurred simultaneously
7 with such death or injury or had not intervened between the wrongful
8 act, neglect or default and the resulting death or injury, an action
9 to recover damages for such death or injury may be maintained against
10 the personal representative of such person.

11
12 **Sec. 3.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to read
13 as follows:

14 (1) No action for a personal injury to any person occasioning
15 death shall abate, nor shall such right of action ~~((determine))~~
16 terminate, by reason of ~~((such))~~ the death~~((7))~~ if ~~((such))~~ the person
17 has a surviving ~~((spouse, state registered domestic partner, or child~~
18 ~~living, including stepchildren, or leaving no surviving spouse, state~~
19 ~~registered domestic partner, or such children, if there is dependent~~
20 ~~upon the deceased for support and resident within the United States at~~
21 ~~the time of decedent's death, parents, sisters, or brothers; but such~~
22 ~~action may be prosecuted, or commenced and prosecuted, by the executor~~
23 ~~or administrator))~~ beneficiary in whose favor the action may be
24 brought under subsection (2) of this section.

25 (2) An action under this section shall be brought by the personal
26 representative of the deceased~~((7))~~ in favor of ~~((such))~~ the surviving
27 spouse or state registered domestic partner, ~~((or in favor of the~~
28 ~~surviving spouse or state registered domestic partner))~~ and ~~((such))~~
29 children((, or if)). If there is no surviving spouse ((or)), state
30 registered domestic partner, ((in favor of such child)) or children,
31 ((or if no surviving spouse, state registered domestic partner, or
32 such child or children, then)) the action shall be brought in favor of
33 the decedent's:

34 (a) Parents((, sisters, or brothers who may be dependent upon such

1 ~~person for support, and resident in the United States at the time of~~
2 ~~decedent's death))~~ if the parents are financially dependent upon the
3 decedent for support or if the parents have had significant
4 involvement in the decedent's life; or

5 (b) Sisters or brothers who are financially dependent upon the
6 deceased person for support if there is no spouse, state registered
7 domestic partner, child, or parent.

8 (3) In addition to recovering economic losses, the persons
9 identified in subsection (2) of this section are entitled to recover
10 any noneconomic damages personal to and suffered by the decedent
11 including, but not limited to, damages for the decedent's pain and
12 suffering, anxiety, emotional distress, or humiliation, in such
13 amounts as determined by a jury to be just under all the circumstances
14 of the case.

15 (4) For the purposes of this section:

16 (a) "Financially dependent for support" means substantial
17 dependence based on the receipt of services that have an economic or
18 monetary value, or substantial dependence based on actual monetary
19 payments or contributions; and

20 (b) "Significant involvement" means demonstrated support of an
21 emotional, psychological, or financial nature within the relationship,
22 at or reasonably near the time of death, or at or reasonably near the
23 time of the incident causing death.

24
25 **Sec. 4.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read
26 as follows:

27 (1) A ((~~mother or father, or both,~~) parent who has regularly
28 contributed to the support of his or her minor child, ((~~and the mother~~
29 or father, or both, of a child on whom either, or both, are)) or a
30 parent who is financially dependent on a minor child for support or
31 who has had significant involvement in such child's life, may maintain
32 or join ((~~as a party~~)) an action as plaintiff for the injury or death
33 of the child.

34

1 (2) Each parent, separately from the other parent, is entitled to
2 recover for his or her own loss regardless of marital status, even
3 though this section creates only one cause of action((, but if the
4 parents of the child are not married, are separated, or not married to
5 each other damages may be awarded to each plaintiff separately, as the
6 trier of fact finds just and equitable)).

7 (3) If one parent brings an action under this section and the
8 other parent is not named as a plaintiff, notice of the institution of
9 the suit, together with a copy of the complaint, shall be served upon
10 the other parent: PROVIDED, That notice shall be required only if
11 parentage has been duly established.

12 Such notice shall be in compliance with the statutory requirements
13 for a summons. Such notice shall state that the other parent must
14 join as a party to the suit within twenty days or the right to recover
15 damages under this section shall be barred. Failure of the other
16 parent to timely appear shall bar such parent's action to recover any
17 part of an award made to the party instituting the suit.

18 (4) In ((such)) an action under this section, in addition to
19 damages for medical, hospital, medication expenses, and loss of
20 services and support, damages may be recovered for the loss of love
21 and companionship of the child and for injury to or destruction of the
22 parent-child relationship in such amount as, under all the
23 circumstances of the case, may be just.

24 (5) For the purposes of this section:

25 (a) "Financially dependent for support" means substantial
26 dependence based on the receipt of services that have an economic or
27 monetary value, or substantial dependence based on actual monetary
28 payments or contributions; and

29 (b) "Significant involvement" means demonstrated support of an
30 emotional, psychological, or financial nature within the relationship,
31 at or reasonably near the time of death, or at or reasonably near the
32 time of the incident causing death.

33

34

1 NEW SECTION. **Sec. 5.** This act applies to all causes of action
2 filed on or after the effective date of this act.

3
4 NEW SECTION. **Sec. 6.** (1) On December 1, 2010, and every December
5 1st thereafter, the risk management division within the office of
6 financial management shall report to the house appropriations
7 committee, the house state government and tribal affairs committee,
8 the senate ways and means committee, and the senate government
9 operations and elections committee, or successor committees, on the
10 incidents covered by this act that involve state agencies.

11 (2) On December 1, 2010, and every December 1st thereafter, each
12 local government risk pool or local government risk management
13 division, or the equivalent in local governments, shall report to the
14 legislative body of the local government on the incidents covered by
15 this act that involve the local government.

16 (3) This section expires December 2, 2015.

17
18 NEW SECTION. **Sec. 7.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected."

22

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25 ADOPTED 2/13/2010

26 On page 1, line 3 of the title, after "sections;", insert "adding
27 a severability clause;".

28

29

EFFECT: Only does the following: removes language indicating
that the trier of fact may consider the adequacy of a governmental
entity's preventive measures when determining whether that entity
exercised reasonable care; adds a severability clause; changes
the title to reflect the addition of a severability clause.

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